

Sen. Julie Gonzales, Chair
Sen. Chris Hansen
Sen. Paul Lundeen
Sen. Jack Tate

Sen. Pete Lee, Vice Chair
Sen. Nancy Todd
Sen. Rob Woodward



Senate Finance Committee

State Capitol Building, Room 029
Denver, Colorado 80203-1784
(303) 866-3521



February 11, 2020

To: Legislative Members of the Sales and Use Tax Simplification Task Force
Representative T. Kraft-Tharp, Chair
Representative K. Van Winkle, Vice Chair
Senator J. Tate
Senator A. Williams

Date: February 11, 2020

Re: Thresholds that trigger the requirement for destination sourcing

Dear Legislative Members of the Sales and Use Tax Simplification Task Force:

On Tuesday, February 4, 2020, Senator Rankin presented his bill, Senate Bill 20-099, "Concerning the dollar thresholds in place for certain retailers' sales tax collection requirements" to the Senate Finance Committee (Committee). While the Committee ultimately voted to postpone Senator Rankin's bill indefinitely on a 4-3 vote, the Committee members, after an extensive discussion, were sufficiently interested in the concepts included in Senator Rankin's bill that we request the Sales and Use Tax Simplification Task Force (Task Force) to consider: 1) Raising the threshold for economic nexus for out-of-state retailers to \$200,000; 2) Raising the dollar threshold from \$100,000 to \$200,000 that is used to describe a small in-state retailer which is allowed a temporary destination sourcing exception; 3) Whether the thresholds should instead be written in such a way that they can be adjusted automatically by inflation every year; and 4) Whether the destination sourcing exception for in-state retailers should be made permanent.


The Department of Revenue (Department) testified at the hearing that the amount of the threshold for economic nexus and the exception to the destination sourcing rule should be uniform in order to avoid a legal challenge by an out-of-state retailer under the Commerce Clause of the United States Constitution. The Department also cautioned that the current destination sourcing exception for small in-state retailers is actually creating a conflict between the sourcing rules for the collection of any local sales tax that is collected through the state and any local sales tax that is collected through a local home rule jurisdiction. This conflict should be contemplated when the Task Force considers whether the destination sourcing exception for in-state retailers should be made permanent. Furthermore, the Department explained that under current law the destination sourcing exception will no longer be

available when a geographic information system (GIS) database is implemented to maintain jurisdictional boundaries of sales tax districts and to calculate appropriate sales and use tax rates for individual addresses. The GIS database and the electronic sales and use tax simplification system described in Senate Bill 19-006, enacted in 2019, are expected to be online and available for use by June 30, 2020.

House Bill 20-1022, currently assigned to the House Appropriations Committee, which extends the Task Force for an additional five years, includes a requirement that the Task Force *"shall . . . regularly review the business impact of the destination sourcing rules set forth in section 39-26-104 (3), including the thresholds that trigger the requirement for destination sourcing"*. Consequently, if House Bill 20-1022 is enacted this session, it would be appropriate for the Senate Finance Committee to request the Task Force to consider the items laid out in this letter.

Thank you for your continued work to simplify the state's complicated sales and use tax structure.

Sincerely,

A handwritten signature in black ink, appearing to read "Julie Gonzales", written over a circular flourish.

Senator Julie Gonzales, Chair
Senate Finance Committee